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DESDOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

**RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:**

**REED SMITH LLP**  
136 Main Street, Suite 250  
Princeton, New Jersey 08540  
Attn.: Christopher J. Maurer, Esq.  
Tel.: (609)520-6018

After Recording, Return to.  
Baskin, McCarroll, McCaskill, Aldridge  
& Campbell, PA  
\* PO Box 190  
Southaven, MS 38671  
(662) 349-0664

File No: 909120 Initials: \_\_\_\_\_

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**DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

**THIS INSTRUMENT IS TO BE INDEXED AS BOTH A DEED OF TRUST AND A FIXTURE FILING.**

**NAME OF GRANTOR(S):** **RW GOODMAN REALTY, LLC**, a Mississippi limited liability company  
c/o Goodman Realty, Inc.  
636 Old York Road, 2nd Floor  
Jenkintown, Pennsylvania 19046  
Tel.: (215) 885-8383

**NAME OF TRUSTEE(S):** Jayson M. Tonkon, as Trustee  
c/o Wells Fargo Bank, National Association  
Real Estate Banking Group  
Two Logan Square  
Suite 1910  
100-120 North 18th Street  
Philadelphia, Pennsylvania 19103  
Tel.: (215) 640-3923

**NAME OF BENEFICIARY:** **WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
Real Estate Banking Group  
Two Logan Square  
Suite 1910  
100-120 North 18th Street  
Philadelphia, Pennsylvania 19103  
Tel.: (215) 640-3923

To the Chancery Clerk of DeSoto County, Mississippi:

The real property described herein is situated in the City of Southaven, DeSoto County, Mississippi.  
Assessor's Tax Parcel No(s): 1087-3603.6-00006.00

The Indebtedness secured hereby matures not later than December 1, 2014.

## DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THE PARTIES TO THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as this "Deed of Trust"), made November 19, 2009, are **RW GOODMAN REALTY, LLC**, a Mississippi limited liability company (hereinafter referred to as the "Grantor"), **JAYSON M. TONKON**, an individual (hereinafter referred to as the "Trustee"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (hereinafter referred to as the "Beneficiary"). The mailing address of Grantor, Trustee and Beneficiary are the addresses for those parties set forth or referred to in Section 7.8 below.

### ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Grantor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the County of DeSoto, State of Mississippi, described on Exhibit "A" attached hereto, together with the following: (a) all and singular tenements, hereditaments, buildings, improvements, rights-of-way, privileges, liberties, rights, easements, riparian rights, woods, waters, watercourses, mineral, water, oil, air, and gas rights and appurtenances thereunto belonging, or in any wise appertaining and the reversion and revisions and remainder and remainders, rents, income, issues, and profits thereof; (b) all rights, title, and interests of Grantor, now owned or hereafter acquired, in and to any streets, the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, adjoining or abutting said real property to the center line thereof, and all strips and gores within or adjoining said real property, easements and rights-of-way, public or private, all sidewalks and alleys, now or hereafter used in connection with said real property or abutting said real property; (c) all furniture, fixtures, equipment and other articles of personal property owned by Grantor and now or hereafter attached to or used in connection with, or with the operation of, any improvements located on said real property, including, without limitation, all building supplies and materials, furniture, fixtures, and equipment; all furnaces, motors, dynamos, incinerators, machinery, generators, partitions, elevators, steam and hot water boilers, heating and air conditioning equipment, wall cabinets, lighting and power plants, coal and oil burning apparatus, pipes, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, stoves, ranges, shades, screens, blinds, washing machines, clothes dryers, dishwashers, freezers, awnings, vacuum cleaning systems, sprinkler systems or other fire prevention or extinguishing apparatus and materials, including all accessories, additions, substitutions, and replacements thereof, all of which shall be deemed to be and remain and form a part of said real property and are covered by the lien of this Deed of Trust; (d) any and all awards, damages, payments and other compensation, and any and all claims therefor and rights thereto, with respect to said real property which result or may result from any injury to or decrease in value of said real property, whether by virtue of the exercise of the power of eminent domain or otherwise, or any damage, injury or destruction in any manner caused to the improvements thereon, or any part thereof; (e) all air rights, development rights and credits, licenses and permits related to said real property, and (f) all of the estate, rights, title, interests, property, possession, claim, and demand whatsoever of Grantor, as well in law as in equity, of, in and to the same and every part

and parcel thereof with the appurtenances. All interest or estate which Grantor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing are collectively referred to herein as the "Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

**TO HAVE AND TO HOLD** the Property unto Trustee, forever, and Grantor does hereby bind itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay (or cause to be paid) and shall perform and discharge (or cause to be performed and discharged) the "Secured Obligations" (as such term is hereinafter defined) on or before the date same are to be paid, performed and discharged, then the liens, security interests, estates, rights and titles granted by this Deed of Trust shall terminate in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Beneficiary confirming that the Secured Obligations have not been fully and finally paid, performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

- 1.2 **WARRANTY OF TITLE; USE OF PROPERTY**. Grantor is seized of an indefeasible estate in fee simple in and to the Property and hereby warrants to Beneficiary the title to the Property, subject only to "Permitted Liens" (as such term is defined in the Credit Agreement described below). Grantor warrants that the Property is not used principally for agricultural, farming, personal or family purposes, and will not be used as a dwelling by Grantor. Grantor hereby covenants that Grantor (a) shall preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against all lawful claims whatsoever and the claims of all "Persons" (as such term is defined in the Credit Agreement described below) whomsoever claiming or threatening to claim the same or any part thereof and (b) shall make, execute, acknowledge and deliver all such further or other deeds, documents, instruments, or assurances, and cause to be done all such further acts as may at any time hereafter be reasonably required by Beneficiary to protect fully the lien of this Deed of Trust.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED**. Grantor makes this Deed of Trust for the purpose of securing: (a) the performance of the obligations contained herein and in that certain Credit Agreement dated of even date herewith to which Bulldog Realty Partners, LLC, Grantor, Fort Knox Realty Partners, LLC (formerly known as CVS 4628 SC, L.L.C.), Tin Cup Realty Partners, LLC, Degree Realty Partners, LLC, On Target Realty Partners, LLC, Knock Out Realty Partners, LLC, Dark Side Realty Partners, LLC, Town Center Realty Partners, LLC (formerly known as CVS 8902 FL, L.L.C.), Moody Realty Partners, LLC, Empire Realty Partners, LLC, Broken Sound Realty Partners, LLC, Gulf Stream Realty Partners, LLC, and Top Hat Realty Partners, LP (hereinafter collectively referred to as the "Co-Borrowers") and Beneficiary are parties (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Credit Agreement"); (b) the payment of Forty-Five Million Nine Hundred Twenty-Eight Thousand and 00/100 (\$45,928,000.00) Dollars, with interest thereon, according to the terms of (i) that certain Promissory Note - Fee Owned dated of even date herewith, executed by Co-Borrowers, on a joint and several basis, as the co-makers, in favor of Beneficiary, as the payee, in the original principal amount of Thirty-Five Million Five Hundred Ninety-Nine Thousand Nine Hundred Five and 00/100 (\$35,599,905.00) Dollars (hereinafter, as it may be from time to time amended, modified, extended, renewed, refinanced, substituted and/or supplemented, referred to as the "Fee Interest Note") and (ii) that certain Promissory Note - Leasehold Owned dated of even date herewith, executed by Co-Borrowers, on a joint and several basis, as the co-makers, in favor of Beneficiary, as the payee, in the original principal amount of Ten Million Three Hundred Twenty-Eight Thousand Ninety-Five and 00/100 (\$10,328,095.00) Dollars (hereinafter, as it may be from time to time amended, modified, extended, renewed, refinanced, substituted and/or supplemented, referred to as the "Leasehold Interest Note" and hereinafter the Fee Interest Note and the Leasehold Interest Note shall be collectively referred to as the "Notes"); (c) payment to Beneficiary of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature

whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into between any "Loan Party" (as such term is defined in the Credit Agreement) and any "Specified Derivatives Provider" (as such term is defined in the Credit Agreement) in connection with the Notes or the loan evidenced thereby (hereinafter, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, referred to as the "Loan"), including, without limitation, all "Specified Derivatives Contracts" (as such term is defined in the Credit Agreement) and any and all "Specified Derivatives Obligations" (as such term is defined in the Credit Agreement); and (d) any and all extensions, renewals, or modifications of the Notes and Credit Agreement, whether the same be in greater or lesser amounts (hereinafter collectively referred to as the "Secured Obligations"). Defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Credit Agreement.

- 2.2 **INCORPORATION.** The obligations secured hereby shall be construed in the broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.
- 2.3 **NO CREDIT FOR TAXES PAID.** Grantor shall not be entitled to any credit against payments due hereunder by reason of the payment of any taxes, assessments, water or sewer rent, or other governmental charges levied against the Property.

### ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Grantor hereby irrevocably assigns to Beneficiary all of Grantor's rights, title and interests in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Property, whether such leases, licenses and agreements are now existing or entered into after the date hereof (hereinafter collectively referred to as the "Leases"); and (b) the rents, issues, revenues, receipts, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Grantor under the Leases (hereinafter collectively referred to as the "Payments"). The term "Leases" shall also include all subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.
- 3.2 **GRANT OF LICENSE.** Beneficiary confers upon Grantor a revocable license (hereinafter referred to as the "License") to collect and retain the Payments as they become due and payable, until the occurrence of a "Default" (as such term is hereinafter defined). Upon the occurrence and during the continuance of a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Grantor shall be held by Grantor as trustee under a constructive trust for the benefit of Beneficiary. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Grantor hereby relieves the tenants from any liability to

Grantor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole and absolute discretion, any Payments so collected by Beneficiary against any Secured Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Grantor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder or to perform or discharge any obligation, duty or liability of Grantor arising under the Leases.

#### ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Grantor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Grantor now or at any time hereafter has any interest (hereinafter collectively referred to as the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, budgets, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Grantor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undeclared, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Property; all advance payments of insurance premiums made by Grantor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Grantor's rights, title and interests, now or hereafter acquired, to the payment of money from Beneficiary to Grantor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Grantor and Beneficiary in connection with the Notes, including, without limitation, any Specified Derivatives Contract, together with all replacements and proceeds of, and additions and

accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing. Grantor hereby authorizes Beneficiary to file and refile any financing statements, continuation statements, or other security agreements that Beneficiary may require from time to time to confirm the lien of this Deed of Trust with respect to such personal property. Without limiting the foregoing, Grantor hereby irrevocably constitutes and appoints Beneficiary with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority (coupled with interest) in the place and stead of Grantor and in the name of Grantor or in Beneficiary's own name, for Beneficiary to execute, deliver, and file such instruments for and on behalf of Grantor. Notwithstanding any release of any or all of that property included in the Property which is deemed to be "real property", and proceedings to foreclose this Deed of Trust or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the obligations of Grantor as are now or hereafter secured hereby. The Grantor acknowledges that said grant of a security interest covers and is intended to cover all assets of the Grantor.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Mississippi Uniform Commercial Code, as amended or recodified from time to time (hereinafter referred to as the "UCC").

The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Deed of Trust with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Beneficiary under this Deed of Trust or the priority of Beneficiary's lien created hereby, and such financing statement is declared to be for the protection of Beneficiary in the event any court shall at any time hold that notice of Beneficiary's priority of interest in any property or interests described in this Deed of Trust must, in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivision, agency or entity of the federal government, be filed in the Uniform Commercial Code records.

- 4.2 **RIGHTS OF BENEFICIARY.** Upon the occurrence and during the continuance of a Default, Beneficiary shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, upon the occurrence and during the continuance of a Default, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Grantor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Grantor under or from the Collateral. Beneficiary may: (i) upon written notice, require Grantor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Grantor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

Grantor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice. Grantor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

- 4.3 **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Grantor represents and warrants that:

(a) Grantor's principal place of business is located at the address shown in Section 7.8; and (b) Grantor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Grantor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect. Grantor agrees: (a) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary thirty (30) days prior written notice thereof; (b) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the creation, preservation, perfection, priority or enforcement of any of its rights hereunder; and (c) that Beneficiary is authorized to file financing statements in the name of Grantor to perfect Beneficiary's security interest in Collateral.

## ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Grantor and the other Co-Borrowers shall promptly pay and perform each Secured Obligation when due. If Grantor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly adversely affect Beneficiary's rights in the Property, then Beneficiary may (but is not obligated to), at Grantor's expense, take such action as it considers to be necessary to protect the value of the Property and Beneficiary's rights in the Property, including, without limitation, retaining counsel, and any amount so expended by Beneficiary will be added to the Secured Obligations and will be payable by Grantor to Beneficiary on demand, together with interest thereon from the date of advance until paid at the Default Rate.
- 5.2 **TAXES AND ASSESSMENTS.** Grantor shall also pay prior to delinquency all taxes, assessments, municipal or governmental rates, charges, impositions, liens and water and sewer rents or any part thereof, heretofore or hereafter imposed upon Grantor or in respect of the Property before the same shall become in default, as well as all lawful claims which if unpaid might become a lien or charge upon Grantor, the Property, or any part thereof and any and all insurance premiums, costs, and other expenses with respect to the types and amounts of insurance required to be maintained by Grantor (or Grantor's tenants) (hereinafter collectively referred to as "**Property Taxes and Charges**"); provided, however, Grantor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income. Upon the occurrence and during the continuance of a Default, at the request of Beneficiary, Grantor shall pay to Beneficiary, on the date specified in such request and together with each payment of interest due under the Notes, one-twelfth of an amount (hereinafter referred to as the "**Escrow Fund**") which would be sufficient to pay the Property Taxes and Charges in connection with the Property one (1) month prior to each date they become due without interest or penalty. In connection with Grantor's initial payment into such Escrow Fund, Grantor shall also be required to make a one-time payment in an amount sufficient to establish a reserve with respect to said Property Taxes and Charges to Beneficiary (hereinafter referred to as the "**Escrow Reserve**"). Beneficiary will apply the Escrow Fund to the payment of the Property Taxes and Charges which are required to be paid by Grantor pursuant to the provisions of this Deed of Trust. If the amount of the Escrow Fund shall exceed the amount of the Property Taxes and Charges payable by Grantor, or to be held in reserve by Beneficiary, pursuant to the provisions of this Deed of Trust, Beneficiary shall, in its discretion, (a) return any excess to Grantor or (b) credit such excess against future payments to be made to the Escrow Fund. If the Escrow Fund, once established, is not sufficient to pay the Property Taxes and Charges as the same shall become due and payable, Grantor shall promptly pay to Beneficiary, upon request, an amount which Beneficiary shall estimate as sufficient to make up any such deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund may be commingled with the general funds of Beneficiary, not as a trust fund, and shall constitute additional security for the Loan and shall not bear interest. Any fees, costs, or expenses related to the Escrow Reserve, including, without limitation, any escrow servicing fees, shall be the sole cost of Grantor and shall be paid by Grantor immediately upon notice thereof to Grantor from Beneficiary.

5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Grantor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust.

5.4 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- a. The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Grantor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Deed of Trust, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and, subject to the terms, conditions, and provisions of any Subordination Agreement, Acknowledgement of Lease Assignment, Attornment and Non-Disturbance Agreement entered into by Beneficiary with any tenant in the Property (hereinafter, as any such agreement may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, collectively referred to as an "SNDA"), may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Grantor upon any reasonable conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.
- b. At its sole option and provided no Default has occurred and is continuing, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Credit Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Grantor and Co-Borrowers and any guarantors since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Grantor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.



- c. Grantor shall maintain (or cause its tenant(s) to maintain) all insurance required pursuant to the terms, conditions, and provisions of Section 7.5 of the Credit Agreement.
- 5.5 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Grantor's sole cost and expense, Grantor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Grantor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property and Collateral and of any condemnation offer or action.
- 5.6 **COMPENSATION; EXCULPATION; INDEMNIFICATION.** Grantor shall pay all Trustee's fees and reimburse Trustee immediately upon demand for expenses in the administration of this trust, including attorneys' fees. Beneficiary shall not directly or indirectly be liable to Grantor or any other person as a consequence of (a) the exercise or non-exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (b) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Grantor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Grantor.
- GRANTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THE PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (ii) AS A RESULT OF ANY FAILURE OF GRANTOR TO PERFORM GRANTOR'S OBLIGATIONS; OR (iii) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE PROPERTY.** The above obligation of Grantor to indemnify and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release or partial release of the lien of this Deed of Trust.
- 5.7 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Grantor's compliance with the terms hereof, any such inspection being made subject to Beneficiary's giving of reasonable prior notice to Grantor, such prior notice, however, not being required if a Default is then outstanding. Any such inspections shall not unreasonably interfere with the operation of any tenants on the Property.
- 5.8 **SUBSTITUTION OF TRUSTEE.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any

officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

- 5.9 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations (hereinafter collectively referred to as the "Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Property.
- 5.10 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.
- 5.11 **NO DRILLING.** Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any oil, gas or other minerals from the surface or subsurface of the Property regardless of the depth thereof or the method of mining or extraction thereof.
- 5.12 **DUE ON SALE OR ENCUMBRANCE.** Except for Permitted Transfers or as otherwise expressly permitted by the terms, conditions, and provisions of the Credit Agreement, if the Property or any interest therein shall be sold, transferred, including, without limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock, partnership interests, or limited liability company membership interests of a Grantor or managing member or general partner of Grantor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, **THEN** Beneficiary, in its sole and absolute discretion, may at anytime thereafter declare all Secured Obligations immediately due and payable.
- 5.13 **PRESERVATION, MAINTENANCE AND REPAIR.** All buildings, structures, and other improvements which are presently erected and are to be erected upon the Property in the future, shall, at Grantor's or its tenants' own cost and expense, be kept in good and substantial repair, working order and condition in accordance with the terms of all Leases. Grantor shall from time to time make, or cause to be made, all necessary and proper repairs, replacements, improvements, and betterments thereto. Subject to the terms of any Leases, Grantor shall not remove, materially alter, discontinue the use of, sell, transfer, assign, hypothecate, or otherwise dispose of to any Person any part of the Property without the prior express written consent of Beneficiary, except that Grantor shall be permitted to make, from time to time, such

substitutions, additions, modifications, and improvements as may be necessary and as shall not impair the structural integrity, operating efficiency and economic value of the Property. All alterations, replacements, renewals, or additions made pursuant to this Section 5.13 shall automatically become and constitute a part of the Property and shall be covered by the lien of this Deed of Trust except as is otherwise permitted to be removed by a tenant pursuant to the terms of any Leases. Grantor shall not do, and shall not permit to be done, any act which may in any way impair or weaken the security under this Deed of Trust.

- 5.14 **DECLARATION OF NO OFFSET.** Grantor hereby represents to Beneficiary that Grantor has no knowledge of any offsets, counterclaims, or defenses to the principal indebtedness secured hereby, or to any part thereof, or the interest thereon, either at law or in equity. Grantor shall, upon request, furnish a duly acknowledged written statement in form satisfactory to Beneficiary stating either that Grantor knows of no such offsets or defenses or if such offsets or defenses are alleged to exist, the nature and extent thereof and, in either case, such statements shall set forth the amount due hereunder.
- 5.15 **NO ADDITIONAL LIENS ON FIXTURES.** Grantor shall not remove or suffer to be removed from the Property any fixtures owned by Grantor (as the term "fixtures" is defined by the UCC) presently or in the future to be incorporated into, installed in, annexed, or affixed to the Property (unless such fixtures have been replaced with similar fixtures of equal or greater utility or value); nor shall Grantor execute or cause to be executed any security interest upon any such fixtures, additions to, substitutions, or replacements thereof, or upon any fixtures in the future to be installed in, annexed or affixed to the Property, without the prior express written consent of Beneficiary.
- 5.16 **COMPLIANCE WITH LAWS.** Grantor hereby agrees to comply (and to cause its tenants to comply) with all applicable laws, rules, regulations, and ordinances made or promulgated by lawful authority which are now or may hereafter be applicable to the Property within such time as may be required by law. As of the date hereof, Grantor has not received any notice from any such lawful authority that the Property is in violation of any such law, rule, regulation, or ordinance. Grantor hereby covenants and agrees that, if such a notice is received by Grantor, whether directly or from any tenant in the Property, at any time during the existence of this Deed of Trust, Grantor shall promptly notify Beneficiary in writing as to the nature and the extent of such claimed violation and shall further provide Beneficiary a copy of such notice.

#### ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "**Default**" shall mean the occurrence of any default (beyond applicable grace and cure periods) under the Notes, the Credit Agreement, or any of the other Loan Documents, including, without limitation, this Deed of Trust.
- 6.2 **RIGHTS AND REMEDIES.** At any time after the occurrence and during the continuance of a Default, Beneficiary and/or Trustee shall each have all the following rights and remedies:
- a. With any notice required by the terms of the Credit Agreement, to declare all the unpaid balance of the Secured Obligations immediately due and payable;
  - b. With or without notice, and without releasing Grantor or any of the other Co-Borrowers from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Grantor or any of the other Co-Borrowers and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any

premiums or charges with respect to insurance required to be carried under this Deed of Trust in the event such insurance is not then maintained by Grantor or any tenant of Grantor; or (iv) to employ counsel, accountants, contractors and other appropriate persons;

- c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Grantor hereunder, and Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Grantor waives the defense of laches and any applicable statute of limitations. This remedy shall be cumulative of any other non-judicial remedies available to Beneficiary under this Deed of Trust and the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of the Beneficiary;
- d. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Grantor hereby consents to such appointment;
- e. Prior or subsequent to the institution of any foreclosure proceedings, to enter upon the Property, or any part thereof, and take exclusive possession of the Property and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection, or preservation of the Property, including without limitation the right to rent the same for the account of Grantor and to deduct from such payments all costs, expenses, and liabilities of every character incurred by the Beneficiary in collecting such payments and in managing, operating, maintaining, protecting, or preserving the Property and to apply the remainder of such Payments on the Secured Obligations in such manner as Beneficiary may elect. All such costs, expenses, and liabilities incurred by the Beneficiary in collecting such Payments and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Payments as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the rate of interest then applicable on the outstanding principal balance of the Notes, all of which shall constitute a portion of the Secured Obligations. If necessary to obtain the possession provided for above, the Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Beneficiary pursuant to this subsection, the Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of the Beneficiary in managing the Property unless such loss is caused by the willful misconduct of the Beneficiary, nor shall the Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR, AND TO HOLD HARMLESS BENEFICIARY FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY BENEFICIARY UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE.** Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the rate of interest then applicable on the

outstanding principal balance of the Notes, shall be secured hereby, and Grantor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties, or for any Hazardous Materials on or under the Property, or for any dangerous or defective condition of the Property or for any negligence in the management, leasing, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Grantor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Property taken under this subsection. The remedies in this subsection are in addition to other remedies available to Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Beneficiary. The remedies in this subsection are available under and governed by the real property laws of Mississippi and are not governed by the personal property laws of Mississippi, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the UCC. No action by Beneficiary, taken pursuant to this subsection, shall be deemed to be an election to dispose of personal property under the UCC. Any consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Secured Obligations (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Secured Obligations.

- f. Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

- (i) **Public Sale.** Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Property and Collateral, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Mississippi law. If there is no statute in force at the time of the sale governing sales of Mississippi real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Mississippi real property under powers of sale conferred by deeds of trust.
- (ii) **Right to Require Proof of Financial Ability and/or Cash Bid.** At any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (hereinafter referred to as the "Questioned Bidder") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee

may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of the Grantor and Beneficiary, and elect to sell the Property for credit or for a combination of cash and credit; provided, however, that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

- (iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any portion of the Secured Obligations, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured portion remains unpaid, without declaring the entire Secured Obligations to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property and Collateral subject to such unmatured Secured Obligations and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Secured Obligations, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Secured Obligations may be made hereunder whenever there is a default in the payment of any portion of the Secured Obligations, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Secured Obligations or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Secured Obligations.
- (iv) Partial Foreclosure. Sale of a part of the Property or Collateral shall not exhaust the power of sale, but sales may be made from time to time until the Secured Obligations is paid, performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Beneficiary, sell not only the Property, but also the Collateral and other interests constituting security for the Loan under the Loan Documents, or any part thereof, along with the Property and Collateral or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property and Collateral separately from the remainder of the Property and Collateral. It shall not be necessary to have present or to exhibit at any sale any of the Property and Collateral.
- (v) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Property and Collateral or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of any Default, the notice of intention to accelerate, or acceleration of, the maturity of the Secured Obligations, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

- (vi) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Property and Collateral or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Property and Collateral so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Secured Obligations. The Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Beneficiary's purchase shall be applied in accordance with the requirements of this Deed of Trust.
  - (vii) Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property and Collateral so occupied or possessed and sold to such purchaser), and anyone occupying or possessing such portion of the Property and Collateral, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.
  - (viii) Abandonment of Sale. In the event a foreclosure hereunder is commenced by Trustee in accordance with Section 6.2(f) hereof, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Secured Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Secured Obligations and for a foreclosure of the liens and security interests hereof, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property and Collateral or any part thereof in accordance with the provisions of this Deed of Trust
- g. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both; and

Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Beneficiary reasonably deems appropriate. In regard to the above, Grantor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Grantor and Beneficiary; and (z) Beneficiary's credit bid may

be higher or lower than any appraised value of the Property.

Beneficiary may exercise its rights of enforcement with respect to the Collateral under the UCC, and in conjunction with, in addition to, or in substitution for the rights and remedies under the UCC. Beneficiary may, and Grantor agrees, as follows: (i) without demand or notice to Grantor, enter upon the Property to take possession of, assemble, receive, and collect the Collateral, or any part thereof, or to render it unusable; (ii) require Grantor to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; (iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC; (v) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Property may, at the option of the Beneficiary, be sold as a whole; (vi) it shall not be necessary that Beneficiary take possession of the Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (vii) prior to application of proceeds of disposition of the Collateral to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Beneficiary; (viii) after notification, if any, hereafter provided in this subsection, Beneficiary may sell, lease, or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery; (ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Default, Beneficiary having declared all or a portion of such Secured Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (x) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Upon the request of Beneficiary, Grantor shall assemble the Collateral and make it available to Beneficiary at any place designated by Beneficiary that is reasonably convenient to Grantor and Beneficiary. Grantor agrees that Beneficiary shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Grantor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Secured Obligations and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Collateral against the Secured Obligations in accordance with the requirements of this Deed of Trust. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay, perform and discharge the Secured Obligations in full.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and reasonable attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Notes to be



applicable on or after maturity or acceleration of the Notes; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under this Deed of Trust other than those described in Section 6.3 above, less all costs and expenses incurred by Beneficiary or any receiver, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver, shall cure or waive any breach, Default or notice of Default under this Deed of Trust, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Grantor has cured all other Defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Grantor agrees to pay to Beneficiary immediately and without demand all reasonable costs and expenses incurred by Trustee and Beneficiary pursuant to this Article 6 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Grantor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit, and shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees. All of the foregoing amounts must be paid to Beneficiary as part of any reinstatement tendered hereunder or full release hereof. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Grantor hereunder.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Beneficiary and Trustee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Grantor and Beneficiary. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Beneficiary in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence, nor shall Beneficiary waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

- 6.9 **BENEFICIARIES.** Nothing herein expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than Grantor and Beneficiary any right, remedy or claim under or by reason hereof. All covenants, stipulations and agreements herein contained by and on behalf of Grantor shall be for the sole and exclusive benefit of Beneficiary.
- 6.10 **WAIVER OF JURY TRIAL.** GRANTOR AND BENEFICIARY, BY ITS ACCEPTANCE OF THIS DEED OF TRUST, HEREBY WAIVE ANY AND ALL RIGHTS THAT THEY MAY NOW OR HEREAFTER HAVE, POSSESS AND ENJOY UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN GRANTOR AND BENEFICIARY OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THIS DEED OF TRUST. IT IS INTENDED THAT SAID WAIVER OF JURY TRIAL SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDING. GRANTOR AND BENEFICIARY HEREBY RECOGNIZE THAT ANY DISPUTE ARISING IN CONNECTION WITH THE LOAN, IS LIKELY TO BE COMPLEX AND CONSEQUENTLY THEY WISH TO STREAMLINE AND MINIMIZE THE COST OF THE DISPUTE RESOLUTION PROCESS BY AGREEING TO WAIVE THEIR RIGHTS TO A JURY TRIAL.

#### ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. Where Grantor and Co-Borrowers are not the same, "Grantor" means the owner of the Property and Collateral in any provision dealing with the Property and Collateral, "Co-Borrowers" means the obligors in any provision dealing with the Secured Obligations, and both where the context so requires.
- 7.2 **ATTORNEYS' FEES.** If the Notes are placed with an attorney for collection or if an attorney is engaged by Beneficiary to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Grantor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Beneficiary in acting with respect to the terms of the Notes or this Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under the Notes, this Deed of Trust or the obligations secured thereby. A waiver of any term of the Notes, this Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Credit Agreement and the terms of any other document related to the Loan, the terms of the Credit Agreement shall prevail.
- 7.4 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 7.5 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Sale or Encumbrance".

7.6 **LAW GOVERNING; CONSENT TO JURISDICTION.** THIS DEED OF TRUST SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSISSIPPI APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS DEED OF TRUST. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST GRANTOR OR BENEFICIARY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST MAY, AT BENEFICIARY'S OPTION, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF MISSISSIPPI, AND GRANTOR HEREBY WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR *FORUM NON CONVENIENS* OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

7.7 **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Deed of Trust by such attachment for all purposes.

7.8 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Grantor:	RW Goodman Realty, LLC c/o Goodman Realty, Inc. 636 Old York Road, 2nd Floor Jenkintown, Pennsylvania 19046 Attn.: Bruce A. Goodman Telecopier: (215) 885-4749 Telephone: (215) 885-8383
With a copy to:	Friedman Schuman, P.C. 101 Greenwood Avenue, Fifth Floor Jenkintown, Pennsylvania 19046 Attn.: Peter S. Friedman, Esq. Telecopier: (215) 635-7212 Telephone: (215) 690-3804
Trustee:	Jayson M. Tonkon, as Trustee c/o Wells Fargo Bank, National Association Real Estate Banking Group Two Logan Square Suite 1910 100-120 North 18th Street Philadelphia, Pennsylvania 19103 Telecopier: (215) 561-3812

	Telephone: (215) 640-3923 (w/ reference to Loan #1001591-0)
With a copy to:	<b>WELLS FARGO BANK, NATIONAL ASSOCIATION</b> Minneapolis Loan Center 733 Marquette Avenue, 10th Floor Minneapolis, Minnesota 55402 and Reed Smith LLP 136 Main Street, Suite 250 Princeton, New Jersey 08540 Attn: Christopher J. Maurer, Esq. Telecopier: (609) 951-0824 Telephone: (609) 520-6018
Beneficiary:	<b>WELLS FARGO BANK, NATIONAL ASSOCIATION</b> Real Estate Banking Group Two Logan Square Suite 1910 100-120 North 18 <sup>th</sup> Street Philadelphia, Pennsylvania 19103 Attn: Sharon D. Alexander Loan No.: 1001591-0
With a copy to:	<b>WELLS FARGO BANK, NATIONAL ASSOCIATION</b> Minneapolis Loan Center 733 Marquette Avenue, 10th Floor Minneapolis, Minnesota 55402 and Reed Smith LLP 136 Main Street, Suite 250 Princeton, New Jersey 08540 Attn: Christopher J. Maurer, Esq. Telecopier: (609) 951-0824 Telephone: (609) 520-6018

Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

- 7.9 **ADVERTISING.** In connection with the Loan, Grantor hereby agrees that Wells Fargo & Company and its subsidiaries (hereinafter referred to as "**Wells Fargo**") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.
- 7.10 **WAIVER OF MARSHALING RIGHTS.** Grantor, for itself and for all parties claiming through or under Grantor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to

have the Property and/or any other property marshaled upon any foreclosure of the lien of and security interest created by this Deed of Trust or on a foreclosure of any other lien or security interest securing the Secured Obligations. Beneficiary shall have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may designate.

#### 7.11 TRUSTEE PROVISIONS.

- a. Trustee accepts this trust when this Deed of Trust is delivered by Grantor to Beneficiary. Except as may be required by applicable law, Trustee may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- b. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity by Grantor satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- c. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys in fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney in fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **GRANTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**
- d. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any

other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

- e. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.
- f. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

7.12 **RECOURSE TO SEPARATE PROPERTY.** Any married person who executes this Deed of Trust as a Grantor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property and any community property (whether under joint or separate control of such Grantor) which may be executed upon or seized for satisfaction of such obligations under applicable law.

7.13 **INTEREST PROVISIONS.**

- a. **Savings Clause.** It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Mississippi law governing the maximum rate or amount of interest payable on the Notes or the Related Indebtedness (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Mississippi law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Notes, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Notes and/or the Related Indebtedness, or (iii) Grantor will have paid or Beneficiary will have received by reason of any voluntary prepayment by Grantor of the Notes and/or the Related Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically cancelled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Notes and/or the Related Indebtedness (or, if the Notes and all Related Indebtedness have been or would thereby be paid in full, refunded to Grantor), and the provisions of the Notes and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Notes has been paid in full before the end of the stated term of the Notes, then Grantor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Grantor and/or credit such excess interest against the Notes and/or any Related Indebtedness then owing by Grantor to Beneficiary. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written

notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Notes and/or the Related Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged or received by Beneficiary for the use, forbearance or detention of any debt evidenced by the Notes and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Notes and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Notes and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Notes and/or the Related Indebtedness for so long as debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- b. Definitions. As used herein, the term “**Maximum Lawful Rate**” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Mississippi (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Mississippi law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Notes and the other Loan Documents. As used herein, the term “**Charges**” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Beneficiary in connection with the transactions relating to the Notes and the other Loan Documents, which are treated as interest under applicable law. As used herein, the term “**Related Indebtedness**” shall mean any and all debt paid or payable by Grantor to Beneficiary pursuant to the Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, except such debt which has been paid or is payable by Grantor to Beneficiary under the Notes.

#### 7.14 DEFICIENCY.

- a. In the event an interest in any of the Property and Collateral is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows. To the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Notes equal to the difference between the amount owing on the Notes and the amount for which the Property and Collateral was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of any provision of applicable Mississippi law which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property and Collateral as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property and Collateral for purposes of calculating deficiencies owed by Grantor, any guarantor, and others against whom recovery of a deficiency is sought.
- b. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property and Collateral as of the date of the foreclosure sale: (i) the Property and Collateral shall be valued in an “as is” condition as of the

date of the foreclosure sale, without any assumption or expectation that the Property and Collateral will be repaired or improved in any manner before a resale of the Property and Collateral after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property and Collateral for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property and Collateral, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax proration, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property and Collateral shall be further discounted to account for any estimated holding costs associated with maintaining the Property and Collateral pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in clause (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property and Collateral must be given by persons having at least five (5) years experience in appraising property similar to the Property and Collateral and who have conducted and prepared a complete written appraisal of the Property and Collateral taking into consideration the factors set forth above.

- 7.15 **ENTIRE AGREEMENT; AMENDMENT.** THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Deed of Trust and the Loan Documents may be amended or waived only by an instrument in writing signed by the Grantor and Beneficiary.
- 7.16 **MODIFICATIONS IN WRITING.** The terms of this Deed of Trust may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- 7.17 **CHANGE IN LAWS.** During the term of this Deed of Trust, in the event of the passage after the date of this Deed of Trust of any law of the State of Mississippi, or of any other federal, state, county, or local governmental entity, which changes in any way the laws now in force for the taxation of Deed of Trusts, or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes, so as to affect the interest of Beneficiary, then and in such event Grantor shall bear and pay the full amount of such taxes; provided that if for any reason payment by Grantor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the Loan or the other Secured Obligations wholly or partially usurious under any of the terms or provisions of the obligation secured hereunder, or this Deed of Trust, or otherwise, Beneficiary may, at Beneficiary's option, declare the whole sum secured by this Deed of Trust, with interest thereon, to be immediately due and payable at Beneficiary's option, pay that amount or portion of such taxes as renders the Loan or such Secured Obligations unlawful or usurious, in which event Grantor shall concurrently therewith pay the remaining lawful and nonusurious portion of said taxes.
- 7.18 **CREDIT SUPPORT DOCUMENT.** This Deed of Trust is intended to act (a) as a "Credit Support Document" (as such term is defined in any Specified Derivatives Contract), with respect to Grantor and is hereby made a part of the "Schedule" (as such term is defined in any Specified Derivatives Contract) of any Specified Derivatives Contract entered into by Grantor or any other Loan Party in connection with the Loan, which Specified Derivatives Contract shall include the Schedules thereto and all "Confirmations" (as such term is defined in any Specified Derivatives Contract) exchanged between the parties confirming transactions



thereunder, and (b) as a "transfer" under a swap agreement made by or to a swap participant, in connection with a swap agreement, within the meaning of Section 546(g) of the Bankruptcy Code.

- 7.19 **RELEASE OF PROPERTY**. The Property is subject to release from the security title of this Deed of Trust in accordance with the terms, conditions, and provisions of Section 2.12 of the Credit Agreement and Beneficiary agrees to release and discharge of record this Deed of Trust upon Grantor's compliance therewith.

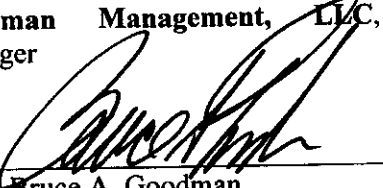
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IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, all as of the day and year set forth above.

**"GRANTOR"**

**RW GOODMAN REALTY, LLC**, a Mississippi limited liability company

By: **Goodman Management, LLC**, its Manager

By:   
Bruce A. Goodman  
Sole Member

**NOTICE OF INDEMNIFICATION:**

**GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.6 AND 7.11 HEREOF.**

STATE OF NEW JERSEY )

COUNTY OF MIDDLESEX )

19th Personally appeared before me, the undersigned authority in and for the said county and state, on this the 19th day of November, 2009, within my jurisdiction, the within named **Bruce A. Goodman**, who acknowledged that he is the Sole Member of **Goodman Management, LLC**, the Manager of **RW GOODMAN REALTY, LLC**, a Mississippi limited liability company, and that for and on behalf of said limited liability company, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said ~~national banking association~~ limited liability company so to do.

Witness my hand and official seal, this 19th day of November, 2009.

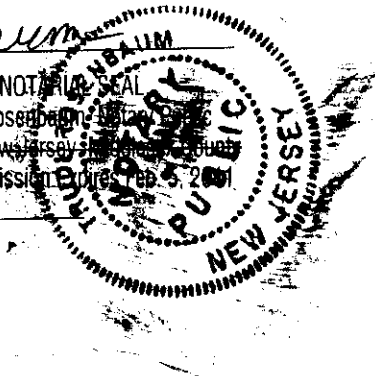
  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[SEAL]

NOTARY SEAL  
Trudi Rosenbaum  
State of New Jersey  
My Commission Expires Feb 3, 2011



**EXHIBIT "A"**

**ATTACHED TO AND MADE A PART OF THAT CERTAIN DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING EXECUTED BY RW GOODMAN REALTY, LLC, AS GRANTOR, IN FAVOR OF WELLS FARGO BANK, NATIONAL ASSOCIATION, AS BENEFICIARY, DATED NOVEMBER 19, 2009.**

**DESCRIPTION OF PROPERTY**

All the certain real property located in the County of DeSoto, State of Mississippi, described as follows:

**ALL THAT CERTAIN PROPERTY** described as Lot 6, First Addition to South Lake Commercial Subdivision as recorded in Plat Book 55, Page 45 and being the CVS 8955 MS, LLC property as described in Book 601, Page 680 in the Northeast Quarter of Section 36, Township 1 South, Range 8 West in the City of Southaven, DeSoto County, Mississippi:

**COMMENCING** at a point at the recognized and accepted Northeast corner of Section 36, Township 1 South, Range 8 West, Southaven, DeSoto County, Mississippi; thence South 89 degrees 38 minutes 28 seconds West along Goodman Road (Mississippi Highway 302) (right-of-way varies), a distance of 71.05 feet to a point; thence South 00 degrees 21 minutes 32 seconds East a distance of 66.45 feet to an iron pin found at the intersection of the south line of Goodman Road and the West line of Airways Boulevard (right-of-way varies); thence South 00 degrees 29 minutes 50 seconds East with the west line of Airways Boulevard a distance of 100.00 feet (plat = 98.99 feet) to an iron pin set; thence North 89 degrees 17 minutes 49 seconds East a distance of 18.21 feet to an iron pin set in the west line of Airways Boulevard (53 feet from centerline); thence South 00 degrees 29 minutes 50 seconds East with the west line of Airways Boulevard a distance of 102.55 feet (plat = 103.27 feet) to an iron pin set in the North line of Lot 14, South Lake Commercial Subdivision as recorded in Plat Book 73, Page 26; thence South 89 degrees 15 minutes 36 seconds West with the north line of said Lot 14 a distance of 286.62 feet (plat = 286.55 feet) to an iron pin found in the east line of Lot 7, 2<sup>nd</sup> Addition to South Lake Commercial Subdivision as recorded on Plat Book 61, Page 19; thence North 00 degrees 56 minutes 59 seconds West with the east line of said Lot 7 a distance of 201.18 feet to an iron pipe found in the south line of Goodman Road; thence North 89 degrees 01 minutes 51 seconds East with the south line of Goodman Road a distance of 270.01 feet to the point of beginning and containing 1.29 acres.

**TOGETHER WITH** all rights and easements contained in that certain Non-Exclusive Access Easement, Drainage Easement and Agreement, dated December 10, 1996 and filed of record on December 18, 1996 in Deed Book 310, page 292, in the Office of the Chancery Clerk of DeSoto County, Mississippi, as amended by that certain Limited Termination and Release of Non-Exclusive Access Easement, dated May 31, 2000 and filed for record in Deed Book 374, page 772, records aforesaid.

**BEING INTENDED TO BE THE SAME PROPERTY** described and shown on that certain survey prepared by Harris & Associates Land Surveyors, LLC entitled "ALTA Land Title Survey of Lot 6, First Addition to South Lake Commercial Subdivision as Recorded in Plat Book 55, Page 45 and Being the CVS 8955 MS, LLC Property as Described in Book 601, Page 680 in Northeast Quarter of Section 36, Township 1 South, Range 8 West, In the City of Southaven, DeSoto County, Mississippi" dated October 22, 2009.